

House Bill 1023 (AS PASSED HOUSE AND SENATE)

By: Representatives Graves of the 12th, Everson of the 106th, Lunsford of the 110th, Ramsey of the 72nd, Scott of the 2nd, and others

A BILL TO BE ENTITLED
AN ACT

To enact the Jobs, Opportunity, and Business Success Act of 2010; to amend and enact provisions intended to provide for tax relief and encourage employment opportunities and business stimulation; to provide for a short title; to provide for legislative intent; to amend Title 34 of the Official Code of Georgia Annotated, relating to labor and industrial relations, so as to provide that, for a period of time, employers who hire persons receiving employment security benefits shall be entitled to a credit against employer contributions; to amend Title 48 of the Official Code of Georgia Annotated, the "Georgia Public Revenue Code," so as to provide that a portion of net long-term capital gains shall be excluded from state taxable income of corporations and individuals; to provide for an income tax credit for certain qualified business investments for a limited period of time; to provide for legislative findings and intent; to provide for definitions; to provide for procedures, conditions, and limitations; to provide for powers, duties, and authority of the state revenue commissioner with respect to the foregoing; to eliminate the corporate net worth tax; to provide for the effect of such elimination on liabilities and eligibilities; to provide that such elimination shall not abate or affect prosecutions, punishments, penalties, administrative proceedings or remedies, or civil actions related to certain violations; to provide for other related matters; to provide for effective dates; to provide for applicability; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Title 34 of the Official Code of Georgia Annotated, relating to labor and industrial relations, is amended by revising Code Section 34-8-156, relating to the State-wide Reserve Ratio and reduction in tax rate, by adding a new subsection to read as follows:

"(g)(1) The Commissioner shall make an expedited request within 15 days of the effective date of this Act for a determination by the United States secretary of labor that implementation of paragraph (3) of this subsection is in conformity with federal law. If

the United States secretary of labor determines that paragraph (3) of this subsection is not in conformity with federal law and cannot be adjusted procedurally by the Commissioner pursuant to Code Section 34-8-93 pending action of the General Assembly to bring about conformity with federal law, paragraph (3) of this subsection shall not become effective. Upon such determination the Commissioner shall take all necessary steps to obtain a waiver of conformity with federal law from the United States secretary of labor. If such waiver is granted, paragraph (3) of this subsection shall become effective immediately upon the granting of the waiver. If the United States secretary of labor determines that paragraph (3) of this subsection could be implemented in conformity with federal law if procedurally adjusted by the Commissioner, the Commissioner shall exercise the authority granted under Code Section 34-8-93 to make such adjustments and paragraph (3) of this subsection shall become effective immediately following such adjustment. If the United States secretary of labor determines that paragraph (3) of this subsection is in conformity with federal law, paragraph (3) of this subsection shall become effective immediately upon such determination.

(2) In the event paragraph (3) of this subsection becomes effective, it shall not be implemented unless the Commissioner determines that the employer contribution and reimbursement liability shall not increase as a result of such implementation.

(3) If this paragraph becomes effective, for calendar quarters beginning on or after July 1, 2010, there shall be a credit to be known as the Georgia Works Tax Credit. The amount of the credit shall be not less than \$25.00 and not more than \$125.00 per individual employee per calendar quarter, as further described in this paragraph. The determination of the amount of the credit, within the permissible range, shall be made and periodically revised by the Commissioner based on the Commissioner's evaluation of conditions in the Georgia labor market, the state of the economy, and the State-wide Reserve Ratio. The credit may be claimed by an employer for up to four calendar quarters for each individual hired by that employer for services to be performed in this state under the following conditions:

(A) Such individual:

(i) Has filed a claim for unemployment compensation in this state and is currently receiving weekly unemployment compensation benefits on that claim under the provisions of Article 7 of this chapter and such benefits are chargeable to the experience rating account of an employer under Code Section 34-8-157;

(ii) Has been profiled by the department as likely to exhaust benefits;

(iii) Has no return-to-work date or promise of future employment; and

(iv) Has at least eight weeks of benefit eligibility remaining on his or her current claim at the time the employer hires the individual;

(B) The credit for each such hired individual per calendar quarter may be claimed on the reports required to be filed under Code Section 34-8-165 as a reduction from amounts otherwise due in each of the four calendar quarters immediately following the hire date of the individual; provided, however, that the credit may not be claimed for any individual who has been hired more than once by the employer claiming the credit or for more than four calendar quarters for that one hiring;

(C) For each calendar quarter for which the credit is claimed, such individual shall be continuously employed by the employer claiming the credit, and such individual's employment with that employer shall consist of at least 30 hours per week during each week of that calendar quarter;

(D) The credit shall be timely claimed for the calendar quarter to which the credit is applicable, and in no event later than the last day of the reporting month following the end of the calendar quarter to which the credit is applicable. The credit shall not be refundable. The credit cannot reduce tax liability below zero; provided, however, that the credit, if properly and timely claimed, may be carried forward and applied against contributions due in any subsequent calendar quarter in the same calendar year as claimed. Any unused credit remaining at the end of a calendar year shall not be carried forward to another calendar year and shall be deemed to have expired; and

(E) No credit shall be claimed or taken by any employer who fails to timely file any report or to timely pay all amounts otherwise due for all calendar quarters during the calendar year for which the credit is claimed. In the event an employer has claimed a credit under this Code section and fails to timely file any report or to timely pay all amounts otherwise due during the year the credit is claimed, the amount of any credits claimed for that calendar year shall be canceled and become delinquent as of the date originally due under Code Section 34-8-165 and subject to all the provisions of this article as if no credit had ever been available or claimed."

SECTION 2.

Title 48 of the Official Code of Georgia Annotated, the "Georgia Public Revenue Code," is amended in Code Section 48-7-21, relating to taxation of corporations, by adding at the end of subsection (b) a new paragraph (17) to read as follows:

"(17)(A) For the taxable year beginning on or after January 1 of the calendar year immediately following the state fiscal year in which the revenue shortfall reserve is funded at the level of \$1 billion or more as certified to the commissioner in writing by the state auditor, and prior to January 1 of the next succeeding taxable year, there shall be subtracted from taxable income an amount equal to 25 percent of the excess of the

net long-term capital gain, over the net short-term capital loss included in Georgia taxable net income.

(B) For all taxable years beginning on or after January 1 of the taxable year next succeeding the taxable year specified in subparagraph (A) of this paragraph, there shall be subtracted from taxable income an amount equal to 50 percent of the excess of the net long-term capital gain, over the net short-term capital loss included in Georgia taxable net income.

(C) For purposes of this paragraph, the terms 'net long-term capital gain' and 'net short-term capital loss' shall mean the same as defined in Section 1222 of the Internal Revenue Code."

SECTION 3.

Said title is further amended in subsection (a) of Code Section 48-7-27, relating to computation of taxable net income of individuals, by deleting "and" at the end of paragraph (14); replacing the period at the end of paragraph (15) with "; and"; and adding a new paragraph (16) to read as follows:

"(16)(A) For the taxable year beginning on or after January 1 of the calendar year immediately following the state fiscal year in which the revenue shortfall reserve is funded at the level of \$1 billion or more as certified to the commissioner in writing by the state auditor, and prior to January 1 of the next succeeding taxable year, an amount equal to 25 percent of the excess of the net long-term capital gain, over the net short-term capital loss included in Georgia taxable net income.

(B) For all taxable years beginning on or after January 1 of the taxable year next succeeding the taxable year specified in subparagraph (A) of this paragraph, an amount equal to 50 percent of the excess of the net long-term capital gain, over the net short-term capital loss included in Georgia taxable net income.

(C) For purposes of this paragraph, the terms 'net long-term capital gain' and 'net short-term capital loss' shall mean the same as defined in Section 1222 of the Internal Revenue Code."

SECTION 4.

Said title is further amended by adding a new Code section to read as follows:

"48-7-40.29.

(a) The General Assembly finds that entrepreneurial businesses significantly contribute to the economy of the state. The intent of this Code section is to achieve the following:

(1) To encourage individual investors to invest in early stage, innovative, wealth-creating businesses;

(2) To enlarge the number of high quality, high paying jobs within the state both to attract qualified individuals to move to and work within this state and to retain young people educated in Georgia's universities and colleges;

(3) To expand the economy of Georgia by enlarging its base of wealth-creating businesses; and

(4) To support businesses seeking to commercialize technology invented in Georgia's universities and colleges.

(b) As used in this Code section, the term:

(1) 'Allowable credit' means the credit as it may be reduced pursuant to subparagraph (3) of subsection (i) of this Code section.

(2) 'Headquarters' means the principal central administrative office of a business located in this state which conducts significant operations of such business.

(3) 'Net income tax liability' means income tax liability reduced by all other credits allowed under this chapter.

(4) 'Pass-through entity' means a partnership, an S-corporation, or a limited liability company taxed as a partnership.

(5) 'Professional services' means those services specified in paragraph (2) of Code Section 14-7-2 or any service which requires as a condition precedent to the rendering of such service the obtaining of a license from a state licensing board pursuant to Title 43.

(6) 'Qualified business' means a registered business that:

(A) Is either a corporation, limited liability company, or a general or limited partnership located in this state;

(B) Was organized no more than three years before the qualified investment was made;

(C) Has its headquarters located in this state at the time the investment was made and has maintained such headquarters for the entire time the qualified business benefitted from the tax credit provided for pursuant to this Code section;

(D) Employs 20 or fewer people in this state at the time it is registered as a qualified business;

(E) Has had in any complete fiscal year before registration gross annual revenue as determined in accordance with the Internal Revenue Code of \$500,000.00 or less on a consolidated basis;

(F) Has not obtained during its existence more than \$1 million in aggregate gross cash proceeds from the issuance of its equity or debt investments, not including commercial loans from chartered banking or savings and loan institutions;

(G) Has not utilized the tax credit described in Code Section 48-7-40.26;

(H) Is primarily engaged in manufacturing, processing, online and digital warehousing, online and digital wholesaling, software development, information technology services,

research and development, or a business providing services other than those described in subparagraph (I) of this paragraph; and

(I) Does not engage substantially in:

(i) Retail sales;

(ii) Real estate or construction;

(iii) Professional services;

(iv) Gambling;

(v) Natural resource extraction;

(vi) Financial, brokerage, or investment activities or insurance; or

(vii) Entertainment, amusement, recreation, or athletic or fitness activity for which an admission or membership is charged.

A business shall be substantially engaged in one of the above activities if its gross revenue from such activity exceeds 25 percent of its gross revenues in any fiscal year or it is established pursuant to its articles of incorporation, articles of organization, operating agreement or similar organizational documents to engage as one of its primary purposes such activity.

(7) 'Qualified investment' means an investment by a qualified investor of cash in a qualified business for common or preferred stock or an equity interest or a purchase for cash of qualified subordinated debt in a qualified business; provided, however, that funds constituting a qualified investment cannot have been raised or be raised as a result of other tax incentive programs. Furthermore, no investment of common or preferred stock or an equity interest or purchase of subordinated debt shall qualify as a qualified investment if a broker fee or commission or a similar remuneration is paid or given directly or indirectly for soliciting such investment or purchase.

(8) 'Qualified investor' means an accredited investor as that term is defined by the United States Securities and Exchange Commission who is:

(A) An individual person who is a resident of this state or a nonresident who is obligated to pay taxes imposed by this chapter; or

(B) A pass-through entity which is formed for investment purposes, has no business operations, has committed capital under management of equal to or less than \$5 million, and is not capitalized with funds raised or pooled through private placement memoranda directed to institutional investors. A venture capital fund or commodity fund with institutional investors or a hedge fund shall not qualify as a qualified investor.

(9) 'Qualified subordinated debt' means indebtedness that is not secured, that may or may not be convertible into common or preferred stock or other equity interest, and that is subordinated in payment to all other indebtedness of the qualified business issued or to

be issued for money borrowed and no part of which has a maturity date less than five years after the date such indebtedness was purchased.

(10) 'Registered' or 'registration' means that a business has been certified by the commissioner as a qualified business at the time of application to the commissioner.

(c) A qualified business shall register with the commissioner for purposes of this Code section. Approval of such registration shall constitute certification by the commissioner for 12 months after being issued. A business shall be permitted to renew its registration with the commissioner so long as, at the time of renewal, the business remains a qualified business.

(d) Any individual person making a qualified investment directly in a qualified business in the 2011, 2012, or 2013 calendar year shall be allowed a tax credit of 20 percent of the amount invested against the tax imposed by this chapter commencing on January 1 of the second year following the year in which the qualified investment was made as provided in this Code section.

(e) Any pass-through entity making a qualified investment directly in a qualified business in the 2011, 2012, or 2013 calendar year shall be allowed a tax credit of 20 percent of the amount invested against the tax imposed by this chapter commencing on January 1 of the second year following the year in which the qualified investment was made as provided in this Code section. Each individual who is a shareholder, partner, or member of an entity shall be allocated the credit allowed the pass-through entity in an amount determined in the same manner as the proportionate shares of income or loss of such pass-through entity would be determined. If an individual's share of the pass-through entity's credit is limited due to the maximum allowable credit under this Code section for a taxable year, the pass-through entity and its owners may not reallocate the unused credit among the other owners.

(f) Tax credits claimed pursuant to this Code section shall be subject to the following conditions and limitations:

(1) The qualified investor is not eligible for the credit for the taxable year in which the qualified investment is made but shall be eligible for the credit for the second taxable year beginning after the qualified investment is made as provided in subsection (d) or (e) of this Code section;

(2) The aggregate amount of credit allowed an individual for one or more qualified investments in a single taxable year under this Code section, whether made directly or by a pass-through entity and allocated to such individual, shall not exceed \$30,000.00;

(3) In no event shall the amount of the tax credit allowed an individual under this Code section for a taxable year exceed such individual's net income tax liability. Any unused credit amount shall be allowed to be carried forward for five years from the close of the

taxable year in which the qualified investment was made. No such credit shall be allowed against prior years' tax liability;

(4) The qualified investor's basis in the common or preferred stock, equity interest, or subordinated debt acquired as a result of the qualified investment shall be reduced for purposes of this chapter by the amount of the allowable credit;

(5) The credit shall not be transferrable by the qualified investor except to the heirs and legatees of the qualified investor upon his or her death and to his or her spouse or incident to divorce; and

(6) To be eligible for the credit provided in this Code section, the qualified investor must file an application for the credit with the commissioner on or before June 30 of the year following the calendar year in which the qualified investment was made.

(g) The registration of a business as a qualified business shall be subject to the following conditions and limitations:

(1) If the commissioner finds that any of the information contained in an application of a business for registration under this Code section is false, the commissioner shall revoke the registration of such business. The commissioner shall not revoke the registration of a business solely because it ceases business operations for an indefinite period of time, as long as the business renews its registration;

(2) A registration as a qualified business may not be sold or otherwise transferred, except that, if a qualified business enters into a merger, conversion, consolidation, or other similar transaction with another business and the surviving company would otherwise meet the criteria for being a qualified business, the surviving company retains the registration for the 12 month registration period without further application to the commissioner. In such a case, the qualified business must provide the commissioner with written notice of the merger, conversion, consolidation, or similar transaction and such other information as required by the commissioner; and

(3) The commissioner shall report to the House Committee on Ways and Means and the Senate Finance Committee each year all of the businesses that have registered with the commissioner as a qualified business. The report shall include the name and address of each business, the location of its headquarters, a description of the types of business in which it engages, the number of jobs created by the business during the period covered by the report, and the average wages paid by these jobs.

(h) Any credit claimed under this Code section shall be recaptured in the following situations and shall be subject to the following conditions and limitations:

(1) If within two years after the qualified investment was made, the qualified investor transfers any of the securities or subordinated debt received in the qualified investment to another person or entity, other than a transfer resulting from one of the following:

(A) The death of the qualified investor;

(B) A transfer to the spouse of the qualified investor or incident to divorce; or

(C) A merger, conversion, consolidation, sale of the qualified business's assets, or similar transaction requiring approval by the owners of the qualified business under applicable law, to the extent the qualified investor does not receive cash or tangible property in such merger, conversion, consolidation, sale, or other similar transaction;

(2) Except as provided in paragraph (1) of this subsection, if within five years after the qualified investment was made, the qualified business makes a redemption with respect to the securities received or pays any principal of the subordinated debt;

(3) If within two years after the qualified investment was made, the qualified investor participates in the operation of the qualified business. For the purpose of this paragraph, a qualified investor participates in the operation of a qualified business if the qualified investor, or the qualified investor's spouse, parent, sibling, or child, or a business controlled by any of these individuals, provides services of any nature to the qualified business for compensation, whether as an employee, a contractor, or otherwise. However, a person who provides uncompensated professional advice to a qualified business whether as an officer, a member of the board of directors or managers or otherwise or participates in a stock or membership option or stock or membership plan, or both, shall be eligible for the credit;

(4) The amount of the credit recaptured shall apply only to the qualified investment in the particular qualified business in which the investment was made;

(5) The amount of the recaptured tax credit determined under this subsection shall be added to the qualified investor's income tax liability for the taxable year in which the recapture occurs under this subsection; and

(6) In the event the credit is recaptured because the qualified business ceases business operations, dissolves, or liquidates, the qualified investor may claim either the credit authorized under this Code section or any capital loss the qualified investor otherwise would be able to claim regarding that qualified business, but shall not be authorized to claim and be allowed both.

(i)(1) A qualified investor seeking to claim a tax credit provided for under this Code section must submit an application to the commissioner for tentative approval of such tax credit between September 1 and October 31 of the year for which the tax credit is claimed or allowed. The commissioner shall promulgate the rules and forms on which the application is to be submitted. Amounts specified on such application shall not be changed by the qualified investor after the application is approved by the commissioner. The commissioner shall review such application and shall tentatively approve such application upon determining that it meets the requirements of this Code section.

(2) The commissioner shall provide tentative approval of the applications by the date provided in paragraph (3) of this subsection as follows:

(A) The total aggregate amount of all tax credits allowed to qualified investors or pass-through entities for investments made in the 2011 calendar year and claimed and allowed in the 2013 taxable year shall not exceed \$3 million in such year;

(B) The total aggregate amount of all tax credits allowed to qualified investors or pass-through entities for investments made in the 2012 calendar year and claimed and allowed in the 2014 taxable year shall not exceed \$3 million in such year; and

(C) The total aggregate amount of all tax credits allowed to qualified investors or pass-through entities for investments made in the 2013 calendar year and claimed and allowed in the 2015 taxable year shall not exceed \$3 million in such year.

(3) The commissioner shall notify each qualified investor of the tax credits tentatively approved and allocated to such qualified investor by December 31 of the year in which the application was submitted. In the event that the credit amounts on the tax credit applications filed with the commissioner exceed the maximum aggregate limit of tax credits under this subsection, then the tax credits shall be allocated among the qualified investors who filed a timely application on a pro rata basis based upon the amounts otherwise allowed by this Code section. Once the tax credit application has been approved and the amount approved has been communicated to the applicant, the qualified investor may then apply the amount of the approved tax credit to its tax liability for the tax year for which the approved application applies.

(j) The commissioner shall promulgate any rules and regulations necessary to implement and administer this Code section."

SECTION 5.

Said title is further amended by revising Article 4 of Chapter 13, relating to the corporate net worth tax, in its entirety as follows:

"ARTICLE 4

48-13-70.

(a) For net worth taxable years beginning on or after January 1, 2012, there shall be no corporate net worth taxes whatsoever levied or collected under this article and no corporate net worth returns are required.

(b) Tax, penalty, and interest liabilities and refund eligibility for prior net worth taxable years shall not be affected by the enactment of this revised article and shall continue to be governed by the provisions of this article as it existed immediately prior to January 1, 2012.

(c) The revision of this article pursuant to this Code section shall not abate any prosecution, punishment, penalty, administrative proceedings or remedies, or civil action related to any violation of law committed prior to January 1, 2012."

SECTION 6.

(a) Except as otherwise provided in subsection (b) of this section, this Act shall become effective upon its approval by the Governor or upon its becoming law without such approval.

(b) Section 5 of this Act shall become effective on January 1, 2012.

SECTION 7.

All laws and parts of laws in conflict with this Act are repealed.